

REMARKS

This responds to the Office Action dated 18 June 2004. Applicant respectfully requests reconsideration of the application in view of the foregoing amendments and following remarks. Claims 1-30 remain pending in the application. Claims 1-18, 21, 23-25, 27, and 29 have been amended. Applicant respectfully submits that the amendment, along with the arguments below, have resolved the rejections.

Allowable Claims

Applicant acknowledges the allowance of claims 19 and 20 and the indication that claims 2-11, 17, 18, 23, 24, 27 and 29 would be allowed if rewritten in independent form including all the limitations of the base claim. Claims 2-11, 17, 18, 23, 24, 27 and 29 have been rewritten in independent form and should be allowable. Claims 2-11, 17, 18, 23, 24, 27 and 29 were not amended to overcome the prior art or for any other reason relating to the patentability of the claimed invention. Claims 2-11, 17, 18, 23, 24, 27 and 29 retain their original scope and have not been narrowed in any way.

Response to Rejections Under 35 U.S.C. § 102

The Examiner has rejected claims 1, 21, 22, 25, 26, and 30 under 35 U.S.C. § 102(b) as being anticipated by Kuntz (U.S. 5,117,876). The Examiner alleges that each of the limitations in these claims is identically shown by Kuntz.

As the Examiner knows, for a prior art reference to anticipate in terms of 35 U.S.C. § 102, each and every element of the claimed invention must be identically shown in a single reference. *Diversitech Corp. v. Century Steps, Inc.*, 850 F.2d 675, 677 (Fed. Cir. 1988). Applicant has amended claim 1 to recite first and second “non-

manual vacuum generators.” The alternative vacuum disclosed by Kuntz ‘876 is a manually operated vacuum (*i.e.*, a hand pump). Col. 4, ll. 37-42. Thus, Kuntz ‘876 does not disclose or suggest first and second non-manual vacuum generators. Therefore, claim 1 should be allowable over Kuntz ‘876.

Likewise, claims 21 and 25 have been amended to recite first and second “non-manual vacuum generators.” Accordingly, for the same reasons offered above with regard to claim 1, claims 21 and 25 should be allowable over Kuntz ‘876. Claim 22 depends from claim 21, and claims 26 and 30 depend from claim 25. Therefore, claims 22, 26, and 30 should also be allowable.

Response to Rejections Under 35 U.S.C. § 103

The Examiner has rejected claims 12-16 under 35 U.S.C. § 103(a) as being unpatentable over Kuntz in view of Kriewaldt (U.S. 5,492,144). The Examiner alleges that although Kuntz does not disclose the vacuum generator at least partially inserted into the vacuum fuel tank or holding tank, Kriewaldt does show a vacuum generator 52 with associated tubing and float valves 70 that are partially inserted into an associated holding tank. The Examiner alleges that it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the tubing of Kuntz to have a portion inserted into the holding tank 52 in view of the teachings of Kriewaldt.

As the Examiner knows, for a claim to be obvious, the combination of references must teach or suggest all of the claim limitations. *In re Vaeck*, 947 F.2d 488 (Fed. Cir. 1991). Applicant has amended claim 12 to recite “a vacuum generator integral with and at least partially inserted into the holding tank.” A vacuum generator is an apparatus that actually creates the vacuum. Kriewaldt clearly discloses its vacuum generator 52

separate and outside of its holding tank 12. Kuntz also discloses its vacuum generator 54 separate and outside of its holding tank 52. Therefore, claim 12 and all claims that depend therefrom should be allowable.

In addition, the tubing and ball valves of Kreiwaladt may not be construed to be a vacuum generator. Vacuum generators *create* vacuums, and the ball valves of Kreiwaladt are operable to *prevent* a vacuum under certain conditions. Therefore, Kreiwaladt teaches against integrating the vacuum generator 52 with the holding tank 12. Therefore, Applicant respectfully requests that the §103 rejection of claim 12-16 be withdrawn.

Claim 28 was also rejected under 35 U.S.C. § 103(a) as being unpatentable over Kuntz in view of Kriewaladt. However, claim 28 depends from claim 25, and claim 25 should be allowable for the reasons discussed above. Therefore, the rejection of claim 28 is moot.

Moreover, a proper §103 rejection requires that the Examiner show all of the claim limitations in the combination of references. Nevertheless, the Examiner has admitted that neither Kuntz nor Kreiwaladt discloses preventing fuel freefall of more than 6 inches. Therefore, the rejection of claim 28 is improper. Preventing freefall from anything more than 6 inches is not simply a workable range, there is nothing shown by the Examiner that would allow one of skill in the art to modify Kuntz or Kreiwaladt to come up with the claimed limitation.

Conclusion

Applicant respectfully submits that all claims should be in condition for allowance. Applicant respectfully requests the Examiner to telephone the undersigned

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attorney if there are unresolved matters in the present application to expedite the examination process.

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Respectfully submitted,

A handwritten signature in black ink, appearing to read 'L. Grant Foster', written over a horizontal line.

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